

TOWN OF FOXBOROUGH  
SELECTMEN'S MEETING  
JANUARY 14, 2016

Members Present: David S. Feldman, Vice Chairman  
Christopher P. Mitchell, Clerk  
John R. Gray  
Virginia M. Coppola

Others Present: William G. Keegan, Jr., Town Manager  
Ms. Mary Beth Bernard, Assistant Town Manager  
Mr. Mark Duffy, Judy's Flowers  
Ms. Judith Duffy, Judy's Flowers  
Attorney Patrick Costello  
Mr. William Casbarra  
Ms. Lorraine Brue, 126 Mechanic Street

James DeVellis was not present for this meeting.

The meeting was brought to order at 6:30 p.m. by David Feldman.

David Feldman read the agenda.

**6:30pm – Public Hearing – Mark Duffy, Judith Duffy - Municipal Conversion Permit for Former Fire Station, 40 School Street and 21 Market Street**

Christopher Mitchell read the public hearing notice.

Motion to open the public hearing. **Vote 4-0-0**

Ms. Coppola wanted to make the statement that the financial attorney for this transaction is Coppola & Coppola from Marblehead and wanted to say that it was absolutely no relation to either she or her late husband's family.

Mark Duffy and Judy Duffy introduced themselves.

Mr. Feldman stated that Mark and Judy Duffy were blazing a path in town history.

Mr. Feldman stated that town counsel was there as well. He stated that the Board will have a lot of questions and he was sure that they would have a lot of questions; the Board really hasn't gone through this yet. The Board has a lot of information and Mr. Feldman thought it would be best for the Duffy's to explain what they were thinking as far as development or future plans.

Mr. Duffy responded that he thought the letter provided to the Selectmen gave a general outline of what they were planning on doing at least in the short term. Because they are still in the infancy of this process (it hasn't been 30 days) the future long term plans they haven't gotten very far with those. Short term wise, they recognize the town's desire for redevelopment whether that means redeveloping the properties as they exist or tearing the properties down. They are in favor of anything that improves the town because they have the building at 34 School Street that abuts those properties. The reason they bid on those properties was to protect their little corner of the world because their current building houses 14 tenants; their business, Judy's Flowers is in the basement and they have 27 employees of their own so they wanted to protect their corner of the world.

Short term plans with the funeral home, it is in a pretty bad state of disrepair. Right off the bat they are going to be boarding up all of the windows to protect it from the elements; every window in the funeral home has been broken so they want to protect it for the winter so it doesn't get any worse on the inside. Over the last 5-6 years the inside has deteriorated pretty rapidly because it has been exposed to the elements with all of the broken windows and doors.

The fire station they are currently in talks with a local businessman that wants to purchase it from them and that will take place after the closing which was supposed to be tomorrow but looks like it might be next week now. That is the immediate short term plans.

Mr. Feldman stated that just for everyone's understanding in the audience and who may be watching at home, the purpose of this is to administer the conversion of a municipally owned property in a manner that will be in harmony with the intent of the zoning bylaws and will ensure the integrity of abutting neighborhoods. That is why they are going through this process now.

Mr. Feldman asked Attorney Costello if there was anything else he may want to add for municipal conversions and what the Board's limitations may be. Attorney Costello stated that this hearing is required under the Zoning Bylaw in Article 7 and the intent as Mr. Feldman had stated was to make sure that any proposed reuse of municipal property that is sold is integrated into the existing pattern of the neighborhood in the spirit and consistent with the purpose and intent of the zoning bylaw. The Board does have broad authority under this particular permitting provision. No sale, lease or occupancy agreement with respect to municipal property can be consummated or completed unless the Board issues such a permit. It is a very significant step in the sale process; in fact both by the bylaw and pursuant to the Memorandum of Sale that has been executed by the purchasers with the town as a result of the auction; it is a requirement that the buyers have assumed to obtain this permit to move forward with the sale. The criteria for review is quite simply as stated; the Board has the authority to consider whether or not the proposed use of this property is consistent with the purpose and intent of the zoning bylaw and that it would fit in with the existing neighborhood and not be detrimental within the existing neighborhood which the property is located. In order to make that type of decision it is obviously necessary for the Board to have sufficient information in order to gauge the impacts or effects that the proposed project will have. The bylaw does in fact state four specific types of documents an applicant is required to submit:

1. A detailed description and site plan for the proposed use.

2. The number of employees or residents which shall be retained or housed on the site.
3. Projections of traffic flows and proposed access egress provisions.
4. Documents which would address other concerns that the Board of Selectmen may consider necessary and appropriate to make a determination.

Based on the limited documentation that Attorney Costello has seen and perhaps the Board has seen, he thinks it would be somewhat difficult at this juncture in the process for the Board to render any substantive decision on the impacts of this proposed use may have because they don't really know specifically what the proposed use is.

Attorney Costello stated that he certainly thinks the bylaw contemplates a more comprehensive submission of material for the Board to review prior to being placed in the position of making a decision on the permit application. That being said, the Board has basically three options when an application or such a permit is filed; they can:

1. Grant the permit without conditions.
2. Grant the permit with such conditions as the Board may deem appropriate to meet the criteria of the bylaw.
3. Prohibit a particular proposed use and they can deny an application for a permit which basically sends the process back to square one.

There is no need for the Board to make any final determination tonight; it is their call and this is a duly posted hearing and they are there to hear whatever information or evidence submitted by the applicants as well as interested people in the community. It would be permissible in Attorney Costello's view for the Board to continue this hearing should it deem it appropriate to allow for additional information whether it is that which they require or whether it is information that is specified in the bylaw to be submitted to the Board to assist them in making a determination.

Mr. Gray stated that he wasn't at the auction but that afternoon he heard the Duffy's were the successful bidder and it took a second or two to sink in and then he thought about it and said given that they own the property next door there is a great opportunity to combine parcels and to possibly build something spectacular up there. They are probably aware that they had this process before where they had sealed bids and they asked developers to come by and sort of describe what their redevelopment picture would look like. In Mr. Gray's mind he had a picture (and that was why he was glad they got it) that they could move their business up to the common side and actually have retail on the first floor and maybe professional offices or housing on the second or third stories. He was a little disappointed when he heard that they were just going to basically reuse the fire station for an office building or other things. He had a vision of a spark or something fantastic in downtown Foxborough that would propel other developers to move in with similarly spectacular projects. Mr. Gray asked the Duffy's if that had ever crossed their

mind that this might be one of their plans. Mr. Duffy stated that they definitely encourage development; as he had stated to Mr. Keegan, they are 100% on board if a developer has an offer that they can't refuse to buy the parcels and to knock down the buildings and put up something spectacular as Mr. Gray envisions; they are all for it so they are not against development at all. They are florists by trade; they are not building developers, he doesn't have any architectural background. Mr. Gray stated that part of the dilemma was that in order for the Board to grant this municipal conversion, they were looking for the recipient of this conversion to have such plans; they didn't know it was going to go another few steps and that is part of their dilemma, they were hoping they were going to be the people that would take it; convert it; and make it spectacular. They didn't know there was going to be secondary and perhaps tertiary sales down the road and that could take a number of years.

Mr. Keegan stated that he did meet with the respective buyers a few weeks ago when the sale was first consummated and they talked about the process and how it would unfold and part of the challenge here of course is that it is difficult to actually pull real plans together unless you truly contemplate a major plan redevelopment for this project in a matter of just a few days because you don't really own the property yet but you hope to own the property and therefore by having that ownership you can move forward on the plans. Because this was an auction there was no certainty they would have actually owned it up until their bid was finalized so therefore the lead time that would typically occur if this was a sealed bid scenario is different in that regard. It is a dilemma on the town's part because they really would like to see the project redeveloped and he thinks they were very open about that and they would like to see it developed in a fashion that would really kick start the development in the downtown area. They mentioned that at the auction itself that they hoped that would be the case.

When they talked about what their plans were they did mention that they were certainly willing to look at some options for someone to purchase the whole thing but they don't know what that means and he thinks they need to hear more about that because he isn't sure what a great offer means and he isn't sure what the numbers mean to them. Given the fact that there are a lot of unanswered questions here, it puts the Board and himself to be in a position that in order to support where they are at, they need to know more and that is what they need to debate tonight.

Mr. Duffy asked if they were asking for a specific number. Mr. Keegan stated no, that was entirely up to them but he didn't want to be in a position where they forewent or passed up on opportunities to redevelop that into something nice with a long term perspective of something that could develop their business as well over the longer term. Mr. Keegan stated that he doesn't have enough information to understand where they are at and have they spoken to other developers; they have talked to some people too, to see if they would develop it. Mr. Duffy stated that no developer has approached him. The two developers that he had spoken to before the auction took place said that the project itself was not desirable for them to move forward just because of the costs in tearing down buildings and putting up new ones; it is a major project. Not hundreds of thousands of dollars but millions of dollars is what he was told. When Mr. Keegan approached them and asked if they were enthusiastic about redevelopment they said absolutely. One of the issues is that they own; currently the key component is the large building at 34 School Street that they currently own and for anyone to do any major redevelopment they would have to tear down their home now. Mr. Duffy stated to Mr. Keegan that they would be in

favor of moving but obviously they would want to be motivated by an offer that made sense for them. They have 10,000 square feet in their current business in the basement of their building and they do have 27 local employees that they employ and they do have 14 tenants; they have 14 businesses in their building as it stands now. As an example that he gave to Mr. Keegan was if a developer came in and said he knows what they paid for 34 School Street and they know what he paid for 21 Market Street and he was going to offer them \$200,000 more than what they paid, that in his mind is not a motivating offer to actually move forward with that developer. If a developer came in and stated that they wanted to take this whole place over and buy out the house next door and take it all, he would be absolutely fine with that if it's beneficial both for their business and for their 14 tenants.

Mr. Gray stated that when Mr. Duffy had said that when he bought it, it was a defensive bid; what were they trying to defend against. Mr. Duffy stated that they wanted to make sure that their property in the rear where their garage bays are at the back of the building, they actually share half of the parking lot with the old funeral home and basically their parking lot is split right down the middle and their concern was if someone came in and did do a major development plan they could literally cut the back half of their parking lot straight off making their building less valuable. The biggest criticism for their building is there is not enough parking. Losing that parking was a big concern not only for them but for the mortgage holder on their building which is their bank; they have been very supportive of this purchase because obviously they want to see the value of their building stay at the level it is at as opposed to decreasing. It is not so much that they are looking to be land barons and to be absentee landlords and just leave buildings vacant and sit as they are. They would love to redevelop the funeral home if it doesn't get knocked down and built into a 60' building as it states in the paperwork in front of them all. They would love to develop the funeral home into a commercial business on the first floor and there are already two apartments on the second floor so that is within his comfort level as an amateur developer. Raising buildings and putting them up on their own; that is not in his comfort level so that is when Mr. Keegan said he knew some developers that may or may not be interested in the project and he said they were always willing to listen; they are there seven days a week so if anyone wants to talk about redevelopment they are all ears. Mr. Keegan stated that he doesn't know if they are interested but he is certainly reaching out to people to see if they would take an interest in it. Mr. Keegan is actively doing that.

Mr. Mitchell stated that for their zoning bylaw the 21 days is obviously not a long enough period to get the detail that their bylaw requires. He wanted to know what their process of continuing this and giving the Duffy's more time; was that feasible and is that possible. Mr. Keegan stated the Board has complete and full control of this process and he thinks that the Board could certainly extend the period of time. It was suggested four weeks to him as a possibility so they can come back with a more detailed plan that they would like to produce. That would be reasonable and then the closing of course would be contingent on that as well. Mr. Feldman asked the Duffy's how that worked with their financing. Ms. Duffy stated that is Valentine's Day and they are florists. Mr. Duffy stated that the Board could continue it as long as they like. If a developer approaches them and says they have a grand plan and provides them with that plan they will certainly bring it back to the Board and present it; if his phone doesn't ring and no one presents any plans he may be sitting here in four weeks and saying they are in the same boat as they were four weeks ago. They are a business looking to expand their little corner of the world

and they have a buyer who is ready to buy the fire station to use it for his offices and he doesn't know what his plans are beyond that. He is a local guy who has been in the community for forty years and he has a business here in town so they have a couple of great local businesses looking to continue and grow their roots here in town so he hopes the Board will at least consider that as a positive as opposed to bringing in an outside developer with who knows what plans.

Mr. Mitchell asked what type of conditions the Board could put on this if they wanted to go ahead and sell the fire station. Mr. Keegan stated that it is a unique bylaw and the Board has broad discretion. He conferred with counsel prior to the meeting tonight in determining what types of conditions they could place on it. The Board could actually put time limits on it; they could say it has to be developed within a certain period of time and they could say this is the kind of development they want to see occur on this property. There are a lot of different conditions they could place on it.

Ms. Coppola stated that one of the considerations when this property was put on the auction block was that they took three parcels; the funeral home, the small parcel behind the fire house and the fire house and those three parcels were auctioned off as one auction item. The reason being is they wanted to see (it is in the Master Plan) that area developed in such a way that it would be large enough so that it would kind of kick off things. One of the things that would kick off would be the requirement for enhancing the sewer. That would not only enhance the development for that building but also run down to be connected down the street to help the neighborhoods that would be able to connect in. A developer would have understood that and would not have considered selling off one part of the property; the fire house, because what you are doing is you are breaking up the property and decreasing the ability for a larger project that would kick in that sewer and kick in everything for downtown; that was the intent of auctioning off that property. If the Board was going to make a condition, her suggestion for a condition would be that, that property would never be able to be broken up. The property that the Duffy's bought at auction, that auctioned unit would have to remain like that and could not be sold. That would be a condition that she would like to see because otherwise it defeats the whole reason for putting that property on the auction block. Mr. Duffy stated that it was his understanding that the fire station was already on town sewer. Ms. Coppola stated very limited; the sewer that it is connected to services the second floor where the fireman lived; it is gravity fed and if you were going to develop that area and put apartments or even businesses it would call for more sewer which would mean they would have to hook up the sewer line to Market Street and then go down; it would be a requirement. What you would be doing is enhancing that area and it would be a requirement and you would have to do it. If you put something up on the second floor it wouldn't help the development of that area because it is not going to do anything, it is going to be status quo and the Board doesn't want status quo, which is why they put it up for auction. Also, the things that they suggested of knocking down the building and putting excess parking for their building, that is not even allowed in the Foxborough Center Overlay District; that is one of the things that is not permitted. Another thing that is not permitted is storing vehicles in the fire house. They have things that they can do and they have things that they can't do and there are things that the town is going to impose. Mr. Duffy stated that the town is storing their Highway Department vehicles there. Ms. Coppola stated that it is a municipal building. This isn't a private property that is going to be sold to another private property; this is a municipal building; the Board are the stewards of municipal buildings and they can impose what they want

because they want to make sure what goes there is in the best interest of the Town of Foxborough that is the whole reason it was put up for auction. There were specific things that were written down; Ms. Coppola went on the website and got all of the information that was provided pre-auction. She got all that information and looked up the references for the rules and regulations of the downtown area; what you can do and what you can't do and the things that they proposed they can't do and then the things they are telling the Board today is not going to get to the goal that the town wanted which would be economic development for the downtown area; sewer, a nice building and things like that. Mr. Duffy stated that he hears her message loud and clear. When Ms. Coppola heard that they had won the auction she was thrilled to death; she thought it was great and when they were asked by the newspaper if they had a plan they said they had no plan and she was really astonished and she was really astonished when she got the plan the other night at the Selectmen's meeting and the plan is only one page. What is required by the municipal conversion is a lot more detailed plans because otherwise they can't give up this municipal property on this; it is not going to work for the town or them.

Mr. Feldman stated that he had a couple of concerns besides the letter and he knows it was really a quick turnaround from the time they made the commit and got the winning bid to today. These things take time to develop and he understands that but it starts with a plan. They have a tremendous opportunity and he doesn't think they realize the opportunity that they have but obviously they need some help to see it through.

Any restrictions that the Board puts on this will be transferred to any future sale so if they were to sell a parcel whatever restrictions are for the entire parcel will transfer to the new owner so they will be required to still meet those conditions. For the Board, they have to be careful because they don't want to put conditions on a theoretical project that doesn't exist and actually hamper their ability to either sell or bring in a developer the Duffy's will maintain the equity and you contribute the real estate as equity in the development in a joint venture. That is where they are at.

The other part of this is the Guaranteed Performance on default. Mr. Feldman asked Attorney Costello to explain that because to him that is a big deal and he wants to make sure that they understand what is at risk.

Attorney Costello stated that any Memorandum of Sale that they executed back on or about December 15, 2015 after the auction, there were certain terms and conditions that governed the sale most of which had been previously noted on the Notice of Sale. One of them is a Guaranteed Performance Requirement which reads:

"The Buyers buying subject to a Guaranteed Performance of the amount bid and entered into the Memorandum of Sale. Guaranteed Performance is understood to mean that in the event of default by the Buyer necessitating a resale at public auction for any lesser amount the Buyer will pay the difference between his/her bid and that of the resale bid." Whatever amount that they bid if there is a default by you in this Memorandum of Sale and the town is forced to resell the property later on and they sell it for a lesser amount the difference between the amount the town sells it for and that they had agreed to sell it for is a Guaranteed Performance liability that they would have to deal with.

In the last paragraph of page 2 of the Memorandum of Sale it states that “The Buyer hereby agrees that he/she must obtain a Municipal Conversion Permit from the Board of Selectmen prior to the closing date recited herein.” That is an obligation under the agreement that they have assumed as well to be here tonight and obtain this permit. It is very significant that they try to find a way to work this thing out. He doesn’t know if the Duffy’s have consulted with counsel at all but they may just want to talk to an attorney just to make sure that they fully understand the terms and conditions of the agreement. Attorney Costello stated that the Board is willing to work with them as they have heard here today but they need to make sure that they are all playing on the same playing field and understand the ramifications of what is going forward. This permit is a prerequisite to the finalization and consummation of the sale so it is a necessary step that has to be accomplished prior to moving to the next step where they may want to consider selling the property to another developer.

Mr. Feldman asked Attorney Costello how much assistance the town could give the Duffy’s in fostering a relationship with a developer or assistance with zoning or anything else; is it just “you are on your own and come back to us with a plan”. Obviously the Board doesn’t want to see anyone get hurt; they are trying to make a major investment in the community and the Board obviously has certain goals and ideas of what they want to see that developed as, but what type of assistance can the Board give them through the Town Manager or Building Department to try and line people up with a developer; what are their limitations and how far can they go; how far can they not go. Attorney Costello stated that there is a very fine line there because they have an agreement there where the town on the one hand is the seller and the Duffy’s are buyers. They bought this property at public auction as the highest bidder and that being the case; they are entitled to a deed to the property provided that they meet all of the conditions of sale which we were just discussing. Attorney Costello stated that he would be very reluctant to play too aggressive a role in terms of trying to locate or identify a developer to make them sell the property because that is in their control; they have earned that right by winning the auction as highest bidder. He would be wary of trying to lead them in any particular direction toward transfer to another entity because that is their prerogative and their prerogative alone. Because the town is selling the property the town gave away that right in large respect to determine who is going to develop it by agreeing in the Memorandum of Sale to accept the consideration that they are legally obligated to pay. With that said, Attorney Costello doesn’t see anything wrong with the town whether through Mr. Keegan’s office or other town development agencies working with the applicants to try and fine tune what proposals they may want to submit to the Board or to line up an appropriate development for this particular site. He would suggest that the town not engage in trying to find any successor entity because that is their prerogative under the auction outcome.

Mr. Feldman stated that it is obvious that they are not going to solve this tonight. Mr. Gray stated that the Board went into the meeting knowing there wasn’t enough time to really resolve this. Mr. Gray stated that the Duffy’s had stated that a month’s time wasn’t enough time to fine tune a plan or to come up with a very definitive plan. Mr. Duffy stated that he thinks a month’s time to find a developer or partner if there is any significant interest out there; would probably be a good timeframe. Mr. Keegan stated that it could take longer than that as that is just the nature of these situations; they can be short term or they can be long term. Mr. Duffy stated that he



knows a couple of developers but the ones that he spoke to said they were not interested but maybe with suggestions from Mr. Keegan's office, they may know a developer that is interested in the project. Mr. Keegan stated that they certainly can't impose anyone on them but they can certainly let people know that the property is open to considerations. Mr. Duffy stated that he doesn't know how long that process will take obviously the closing hinges on that as well because they don't own it so he doesn't know how much detail he can get into about developing something they don't own.

Mr. Gray stated that what they are really looking for is first a vision and then secondarily trying to put some numbers and dimensions and occupancy to the vision. Mr. Duffy stated that he doesn't want to mislead the Board by painting a rosy picture that he is not comfortable with. He wouldn't want to come in front of the Board and say that they want a big building under the requirements that the Board provided and Mr. Casbarra provided without having someone to back that and without someone having the knowledge to do that. Mr. Gray stated that they clearly need some professional help to get this thing organized and he thinks that is good advice to go out and seek it.

Mr. Feldman asked if it would be unreasonable to ask them to come back in 30 days and provide the Board with an update to see where they are at and take another look at where they are going and where they are headed. Mr. Gray stated that 30 days from now is Valentine's Day. Mr. Mitchell stated maybe after town meeting.

Ms. Coppola asked if they can agree that if the parcel is going to be developed, it has to be developed as one unit because that is the only way the sewer is going to kick in. Everything that the Master Plan, the Planning Board and the town has anticipated is only going to kick in if the auction part is developed as one parcel; you can't break it up. It wasn't auctioned off that way because the town anticipated that, that entire area would be developed. Mr. Mitchell stated that it shows it as three separate parcels. Ms. Coppola stated that it was auctioned off as one parcel and the idea was if you break this up then the sewer won't kick in. Mr. Feldman stated that he knows it was sold off as one but from a zoning standpoint, because there are separate parcels you have setback requirements for each parcel and the only way that you can put a restriction on where it has to be developed as one is if you did a 81X plan and combined the lots and made it one lot. Ms. Coppola stated that the Board as part of the municipal conversion can put conditions on it.

Mr. Casbarra stated that they can do an 81X because there are buildings on the property and you are changing the interior lot lines and that is what is called a Surveyor's Certificate so that would create one lot. Right now you do have three separate parcels. Mr. Casbarra stated that he knows exactly what Ms. Coppola is referring to. The Downtown Foxborough Center Overlay District was designed to maximize development and the reason it was sold as one property was because the town realized you couldn't develop the fire station to its maximum potential if you didn't have the parking that the other parcel would provide so by separating them you are limiting the ability to really develop that fire station because it becomes a standalone with no property. He understands about the 81X process also to make it for construction and development purposes that could be done but if you do separate them, you lose all of the potential there of the mixed uses that could be done.

Mr. Feldman stated that his question is, as it is presently constituted can they put a restriction that they can't be broken up where they are separate parcels. Mr. Casbarra stated that the Municipal Conversion Permit is very much like a special permit; the Board is the granting authority and a special permit called a "Permit of Prohibition" they can condition any way they want just as the Planning Board conditions a special permit and just as the Zoning Board conditions their permits, the Board of Selectmen can do that as well. In Mr. Casbarra's opinion, the Board can put that condition on it.

Mr. Feldman stated that being it is a public hearing is there anyone in the audience that has any comments.

Lorraine Brue 126 Mechanic Street – Ms. Brue had a question about the permit conversion process and if whatever conditions are placed on that conversion permit if those conditions are not met and there is a timeframe aspect to it, what happens to that situation at that point. Attorney Costello stated that as Mr. Casbarra had noted, this is akin to a special permit and these conditions that would be imposed would be zoning restrictions on the property and they would be enforceable through the Building Commissioner. Time conditions having certain steps completed by certain dates definitive can be structured in a number of different ways and they can have different recourse or ramifications if they are not met; the permit could be revoked. For an example if a condition is not met in a timely fashion in which case without the permit the sale could be revoked as well and it in effect would be a reverter type provision. They would have to fashion the language accordingly in the condition to make sure it was clear to that point. If a timing condition is not met he would suggest that it be imposed by the Board and incorporated into the special permit in such a fashion that it would lead to a default under the special permit and by specific language in the permit document furthermore a reversion or a reverter of interest back to the town whereas the applicants or the permit holders rights would be terminated altogether to own the property. Mr. Feldman asked if that is where the Guaranteed Performance comes in. Attorney Costello stated no, the Guaranteed Performance is really a presale requirement. The Guaranteed Performance wouldn't be triggered unless and until the applicant defaulted and then the town was forced to sell the property to a second party. That would be a totally different remedy.

Mr. Mitchell asked what would happen if they put restrictions on this property that they can't or won't meet, what happens then. Attorney Costello stated that the Building Commissioner would have the right to enforce. If a permit was issued with conditions they would become zoning conditions that would be subject to enforcement. Mr. Mitchell stated that their original intent was to sell the fire station and redevelop back here so what if they put the condition that, that property is all one and it doesn't fit into what they want to do; they don't own it yet, can they walk away. Attorney Costello would suggest to the Board that a condition much like a special comprehensive permit condition contemplates that there is approval of the permit. The Board would in all likelihood not approve the permit if they can't approve the underlying concept that is being presented to them. If the only proposal submitted to the Board is one akin to what was presented thus far or elaborated but involved a much smaller scale development or separate development of the parcels he doesn't know if the Board would be doing itself any favors or doing the town any favors by approving a permit as applied for and then conditioning it into a

totally different project. The condition follows the approval. In other words, he thinks the Board has to be comfortable with the building concept overall. Mr. Gray stated approve the vision and then work on the rest in which Attorney Costello stated exactly.

Mr. Gray stated that if the Board is going to continue this, one month is not going to work. Mr. Mitchell stated that they should do it the first week of March. Mr. Gray stated that Mr. DeVellis isn't there in which Ms. Coppola stated that he had to recuse himself. Mr. Gray wanted to suggest a few dates because of his schedule. Ms. Coppola stated that the Board can continue it again if after four weeks things aren't buckled down. Mr. Feldman stated that they can do this as part of their regular agenda.

The Board members discussed various dates of 2/15/16, 3/1/16, 3/9/16 and 3/8/16.

Motion by Christopher Mitchell to continue this public hearing until March 8, 2016. Seconded by John Gray. **Vote 4-0-0**

Motion by John Gray to adjourn at 7:18pm. Seconded by Christopher Mitchell. **Vote 4-0-0**